

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

*In re Former Employees of Washington
Mutual Bank v. FDIC as Receiver for
Washington Mutual Bank, et al.*

Master File No. C09-0504 RAJ

DAVID M. WILLIAMS,

Plaintiff,

No. C09-0504 RAJ

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its capacity as receiver
for Washington Mutual Bank,

**STIPULATION AND ORDER
CONSOLIDATING CASES FOR PRE-
TRIAL PURPOSES**

Note Date: September 2, 2009

Defendant.

CHRIS HUTTON, an individual, MARK
HETTEL, an individual, RON LOWERY,
an individual, SEAN BECKETTI, an
individual, ANDREW POHLMANN, an
individual,

No. C09-0528 RAJ

Plaintiff(s),

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION as receiver for
Washington Mutual Bank,

Defendant(s).

STIPULATION AND ORDER CONSOLIDATING
CASES

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1 CHARLES JONES, an individual, CORY
2 STEWART, an individual, TIM EDGE, an
individual, ADAM KLEIVER, an
individual, GLEN SIMECEK, an individual,
3 RAJIV KAPOOR, an individual,

4 Plaintiff(s),

5 v.

6 FEDERAL DEPOSIT INSURANCE
CORPORATION as receiver for
7 Washington Mutual Bank,

8 Defendant(s).

No. C09-0543 RAJ

9 DAMIR KORO, an individual, MARY
10 HAIGHT, an individual, SHERYL
KIRCHMEIER, an individual,

11 Plaintiff(s),

12 v.

13 FEDERAL DEPOSIT INSURANCE
CORPORATION as receiver for
14 Washington Mutual Bank,

15 Defendant(s).

No. C09-0553 RAJ

16 ROBERT COLLINS, *et al.*,

17 Plaintiff(s),

18 vs.

19 FEDERAL DEPOSIT INSURANCE
20 CORPORATION, as Receiver for
Washington Mutual Bank of Seattle,
21 Washington,

22 Defendants.

No. C09-0570 RAJ

1 LINDA MCQUAY, TOM KLEVEN, and
2 JULIE LIABRAATEN, individually,

3 Plaintiffs,

4 v.

5 FEDERAL DEPOSIT INSURANCE
6 CORPORATION as receiver for
Washington Mutual Bank; and the UNITED
STATES OF AMERICA,

7 Defendants.

No. C09-0568 RAJ

8 LUCY HOFFA, an individual, BILL
9 THOMAS, an individual, and PAULA
SKARTLAND, an individual,

10 Plaintiff(s),

11 v.

12 FEDERAL DEPOSIT INSURANCE
13 CORPORATION as receiver for
Washington Mutual Bank,

14 Defendant(s).

No. C09-0573 RAJ

15 MICHAEL F. DAY, an individual,

16 Plaintiff,

17 v.

18 FEDERAL DEPOSIT INSURANCE
19 CORPORATION as receiver for
Washington Mutual Bank

20 Defendant.

No. C09-0684 RAJ

1 JONI WYCKOFF, an individual, TONY
2 CORSELLO, an individual, and KARYN
FURSTMAN, an individual,

3 Plaintiff(s),

4 v.

5 FEDERAL DEPOSIT INSURANCE
6 CORPORATION as receiver for
Washington Mutual Bank

7 Defendant(s).

No. C09-0689 RAJ

8 ROBERT C. BJORKLUND, individually,

9 Plaintiff,

10 v.

11 FEDERAL DEPOSIT INSURANCE
12 CORPORATION as Receiver for
13 Washington Mutual Bank, and as in its
corporate capacity,

14 Defendant.

No. C09-0691 RAJ

15 PETER J. FREILINGER, individually,

16 Plaintiff,

17 v.

18 FEDERAL DEPOSIT INSURANCE
19 CORPORATION, as Receiver for
Washington Mutual Bank, and in its
20 corporate capacity; and the UNITED
STATES OF AMERICA,

21 Defendants.

No. C09-0692 RAJ

1 LYNN EDELSTEIN DU BEY and SCOTT
2 NICHOLS, KENNETH E. KIDO, and
JEFFREY J. DEUEL individually,

No. C09-0711 RAJ

3 Plaintiffs,

4 v.

5 FEDERAL DEPOSIT INSURANCE
6 CORPORATION as receiver for
Washington Mutual Bank,

7 Defendant.

8 RADHA THOMPSON, an individual,

No. C09-0715 RAJ

9 Plaintiff(s),

10 v.

11 FEDERAL DEPOSIT INSURANCE
12 CORPORATION as receiver for
Washington Mutual Bank,

13 Defendant(s).

14 RANDY R. MELBY, individually,

No. C09-0750 RAJ

15 Plaintiff,

16 v.

17 FEDERAL DEPOSIT INSURANCE
18 CORPORATION as receiver for
19 Washington Mutual Bank; and the UNITED
STATES OF AMERICA,

20 Defendants.

1 MARK J. CONWAY, and ROBERT L.
2 ANDERSON,

3 Plaintiffs,

4 v.

5 FEDERAL DEPOSIT INSURANCE
6 CORPORATION as receiver for
Washington Mutual Bank; and the UNITED
STATES OF AMERICA,

7 Defendants.

No. C09-0781 RAJ

8 JASON HERRES, an Individual,

9 Plaintiff(s),

10 v.

11 FEDERAL DEPOSIT INSURANCE
12 CORPORATION as receiver for
Washington Mutual Bank,

13 Defendant(s).

No. C09-0798 RAJ

14 JEFFREY MOSS, an Individual, and
15 SUSAN MORRIS, an Individual,

16 Plaintiff(s),

17 v.

18 FEDERAL DEPOSIT INSURANCE
19 CORPORATION as receiver for
Washington Mutual Bank,

20 Defendant(s).

No. C09-0847 RAJ

JANE ZALUTSKY,

Plaintiff(s),

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for
Washington Mutual Bank of Seattle,
Washington, and FDIC, a corporation,

Defendants.

No. C09-0866 RAJ

STIPULATION AND CONSOLIDATION

1. *Background.* On September 25, 2008, Federal Deposit Insurance Corporation (“FDIC”) was appointed receiver for Washington Mutual Bank. Shortly thereafter and continuing to the present, former Washington Mutual Bank employees began making claims against FDIC as receiver for Washington Mutual Bank (the “Receiver”) arising out of certain change-in-control and other agreements that those former employees had with Washington Mutual. Those claims have resulted, to date, in eighteen (18) pending lawsuits brought by dozens of Plaintiffs in this District who allege the Receiver breached the agreements by failing to pay Plaintiffs under the agreements (the “Lawsuits”). The Receiver denies that Plaintiffs’ claims have merit.

2. *Cases.* The Lawsuits are as follows:

Abbreviated Case Name	Case Number	Date Filed
<i>Williams v. FDIC, as Receiver for Washington Mutual Bank</i>	C09-0504-RAJ	4/14/2009
<i>Hutton, et al. v. FDIC, as Receiver for Washington Mutual Bank</i>	C09-0528-RAJ	4/17/2009
<i>Jones, et al. v. FDIC, as Receiver for Washington Mutual Bank</i>	C09-0543-RAJ	4/21/2009
<i>Koro, et al. v. FDIC, as Receiver for Washington Mutual Bank</i>	C09-0553-RAJ	4/22/2009
<i>McQuay, et al. v. FDIC, as Receiver for Washington Mutual Bank, et al.</i>	C09-0568-RAJ	4/24/2009

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Abbreviated Case Name	Case Number	Date Filed
<i>Collins, et al. v. Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank of Seattle, Washington, et al.,</i>	C09-0570 RAJ	4/24/2009
<i>Hoffa, et al. v. FDIC, as Receiver for Washington Mutual Bank</i>	C09-0573-RAJ	4/28/2009
<i>Day v. FDIC, as Receiver for Washington Mutual Bank</i>	C09-0684-RAJ	5/15/2009
<i>Wyckoff, et al. v. FDIC, as Receiver for Washington Mutual Bank</i>	C09-0689 RAJ	5/15/2009
<i>Bjorklund v. FDIC, as Receiver for Washington Mutual Bank, et al.</i>	C09-0691-RAJ	5/15/2009
<i>Freilinger v. FDIC, as Receiver for Washington Mutual Bank, et al.</i>	C09-0692-RAJ	5/15/2009
<i>Du Bey, et al. v. FDIC, as Receiver for Washington Mutual Bank, et al.</i>	C09-0711-RAJ	5/20/2009
<i>Thompson v. FDIC, as Receiver for Washington Mutual Bank</i>	C09-0715-RAJ	5/21/2009
<i>Melby v. FDIC, as Receiver for Washington Mutual Bank, et al.</i>	C09-0750-RAJ	5/29/2009
<i>Conway, et al. v. FDIC, as Receiver for Washington Mutual Bank, et al.</i>	C09-0781-RAJ	6/5/2009
<i>Herres v. FDIC, as Receiver for Washington Mutual Bank</i>	C09-0798-RAJ	6/10/2009
<i>Moss, et al. v. FDIC, as Receiver for Washington Mutual Bank</i>	C09-0847-RAJ	6/18/2009
<i>Zalutsky, v. FDIC as Receiver for Washington Mutual Bank, et al.</i>	C09-0866-RAJ	6/22/2009

3. *Consolidation.* The Lawsuits arise out of the same or similar transactions and occurrences and involve the same or similar issues of law and fact. In the interests of efficiency and judicial economy, therefore, the parties to the Lawsuits stipulate and agree that the Lawsuits should be, and with the entry of the below Order hereby are, consolidated pursuant to FED. R. CIV. P. 42(a) for all pre-trial purposes. This stipulated consolidation of the Lawsuits does not affect or alter any outstanding deadlines to respond to plaintiffs' complaints and does not waive any defendant's right to receive proper service of process or challenge service of process or restrict any party from asserting any other claim or defense.

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1 4. *Caption.* The parties hereby stipulate, and with the entry of the below Order it is
 2 Ordered, that every pleading filed in the Lawsuits, or in any separate action included herein,
 3 shall bear the following caption:

4 UNITED STATES DISTRICT COURT
 5 WESTERN DISTRICT OF WASHINGTON
 6 AT SEATTLE

7 *In re Former Employees of Washington*
 8 *Mutual Bank v. FDIC, as Receiver for*
 9 *Washington Mutual Bank*

Master File No. C09-0504 RAJ

10 5. *Master Case File.* The files of these consolidated Lawsuits shall be maintained
 11 in one master file under Master File No. C09-0504 RAJ (the "Consolidated Lawsuits"). A
 12 copy of this Order shall be filed in Master File No. C09-0504 RAJ and the entry of this Order
 13 shall be docketed in each of the Consolidated Lawsuits.

14 6. *Newly Filed/Transferred Actions.* The parties anticipate that, in addition to the
 15 currently pending Lawsuits, new lawsuits arising out of the same or similar transactions or
 16 occurrences and involving the same or similar issues of law and fact may be filed in or
 17 transferred to this District. Such lawsuits shall be consolidated with the Lawsuits and assigned
 18 to the above Master File No. When a case involving the same or similar transactions or
 19 occurrences and involving the same or similar issues of law and fact is hereafter filed in or
 20 transferred to this District, counsel in the above-captioned matter shall call the new action to
 21 the attention of the Court and shall provide any assistance needed to the Court to ensure the
 22 proper consolidation of such action with this consolidated proceeding.
 23

24 7. *New Plaintiffs.* The parties also anticipate that, in addition to the currently
 25 named plaintiffs in the Lawsuits, more plaintiffs will be added to the Lawsuits. The parties will
 26

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1 work together to efficiently and conveniently allow the addition to the currently pending
2 Lawsuits of new named plaintiffs who are similarly situated to and have similar claims as the
3 currently named plaintiffs. The parties shall cooperate to amend pleadings pursuant to FED. R.
4 Civ. P. 15 to add any such similarly situated individuals to the Lawsuits. When a complaint is
5 amended to add a new plaintiff to the Consolidated Lawsuits, defendants shall have not less
6 than twenty (20) days to file an Answer or otherwise respond to the amended pleading.
7

8 8. *Plaintiffs' Co-Liaison Counsel.* The law firms of Breskin Johnson & Townsend
9 PLLC and Don S. Willner & Associates, PC are hereby appointed as Plaintiffs' co-liaison
10 counsel for the conduct of Plaintiffs in these Consolidated Lawsuits. Plaintiffs' co-liaison
11 counsel shall have authority to speak for Plaintiffs in matters regarding pre-trial procedure and
12 make pre-trial work assignments in such manner as to facilitate the orderly and efficient
13 prosecution of this litigation and to avoid duplicative or unproductive effort, including but not
14 limited to discovery efforts. Plaintiffs' co-liaison counsel shall be responsible for coordinating
15 all activities and appearances on behalf of Plaintiffs. Defendants' counsel may rely upon all
16 agreements made with any of Plaintiffs' co-liaison counsel, and such agreements shall be
17 binding on Plaintiffs.
18

19 9. *Defendants' Liaison Counsel.* The law firm of DLA Piper LLP (US) and the
20 counsel undersigned below are hereby appointed as Defendants' liaison counsel for certain
21 conduct of Defendants in these consolidated Lawsuits. Defendants' liaison counsel shall have
22 authority to speak for Defendants in matters regarding pre-trial procedure and make pre-trial
23 work assignments in such manner as to facilitate the orderly and efficient prosecution of this
24 litigation and to avoid duplicative or unproductive effort. Defendants' liaison counsel shall be
25 responsible for coordinating activities and appearances on behalf of Defendants. As to matters
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1 regarding pre-trial procedure and pre-trial work assignments, Plaintiffs' counsel may rely upon
2 all agreements made with Defendants' liaison counsel, and such agreements shall be binding on
3 Defendants.

4 10. *Electronic Exchange of Documents.* The parties agree that the expense of
5 exchanging documents, including but not limited to discovery related documents, can be
6 minimized by agreement of all parties to cooperate to exchange documents electronically
7 whenever possible. The parties agree that, where documents can be exchanged electronically
8 using reasonably convenient methods, they will accept e-mail service of all documents,
9 including service of propounding discovery and discovery responses, and any other documents
10 required to be served (*e.g.*, service of papers filed under seal). No party is obligated to serve
11 documents by way of email, but the parties hereby agree that email service of documents shall
12 be effective. Mr. Day, the *pro se* plaintiff, agrees to accept e-mail service of documents at his
13 personal e-mail address, michael.forest.day@gmail.com.

14 11. *Discovery.* The parties agree that discovery efforts need to be streamlined to be
15 efficient and expeditious. The parties will work in good faith to cooperate on all discovery
16 proceedings. While no individual plaintiff will be deprived of his or her right to take discovery
17 pertinent to his or her individual claim within the scope of FED. R. CIV. P. 26, the parties agree
18 that in the interests of efficiency and economy, certain limitations shall be placed on discovery.
19 Given that Plaintiffs' anticipated scope of discovery and Defendants' defenses are still
20 unknown, the parties currently agree to the below provisions with respect to discovery and will
21 supplement these provisions through a Joint Status Report and Discovery Plan, which will be
22 filed after the cases are consolidated, so that appropriate discovery guidelines and limitations
23 can be ordered by the Court in this Consolidated Lawsuit.

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25
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1 a. *Written Discovery.* The parties stipulate and agree that written discovery
2 shall be coordinated by the parties to avoid unnecessary and duplicative written discovery.

3 b. *Depositions.* The parties stipulate and agree that depositions shall be
4 coordinated by the parties to avoid unnecessary and duplicative depositions. Further,
5 depositions shall be conducted in accordance with the following rules:
6

7 i. Absent leave from the Court or by agreement from opposing
8 counsel, each witness shall only be deposed one time. The parties will work in good faith to
9 establish a fair amount of time for such examination.

10 ii. Unless contrary to an order of the Court, the parties (and, when
11 appropriate, a nonparty witness) may stipulate in any suitable writing to alter, amend, or
12 modify any practice relating to noticing, conducting, or proceeding with regard to a deposition.
13 Stipulations for the extension of discovery cutoffs set by the Court are not valid, however, until
14 approved by the Court.
15

16 iii. To allow counsel to make arrangements for adequate deposition
17 space, absent extraordinary circumstances, counsel who intend to attend a deposition noticed in
18 the consolidated action should advise counsel for the noticing party at least three days prior to
19 the deposition.
20

21 iv. Each side should ordinarily designate one attorney to conduct the
22 principal examination of the deponent. Counsel should cooperate so examination by multiple
23 attorneys does not exceed the allotted time.

24 v. Any objection made at a deposition shall be deemed to have been
25 made on behalf of all other parties. All objections, except those relating to form and
26 foundation, are preserved.

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